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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the fifth periodic report of the Netherlands

Addendum

Information provided by the Netherlands in follow-up to the concluding observations*

[Date received: 24 October 2013]

* The present document is being issued without formal editing.

Please recycle

In its letter of 26 November 2012,[1] the Committee on the Elimination of Discrimination against Women submitted to the Kingdom of the Netherlands a number of recommendations, requesting the Kingdom to provide additional information on their follow-up by July 2013. The Committee's recommendations are reproduced below, followed immediately by the Kingdom's reply.

- *Enact the Temporary Domestic Exclusion Order Act in Bonaire, St Eustatius and Saba and the Country Ordinance on Temporary Domestic Exclusion Orders in Aruba.*

Since 10 October 2010, Bonaire, St Eustatius and Saba have constituted "the Netherlands in the Caribbean". Their position broadly resembles that of the municipalities in the Netherlands, with modifications arising from factors such as their small size, their distance from the Netherlands, and their location in the Caribbean region. For the time being, the Netherlands Antilles legislation will largely remain applicable, albeit in modified form and with the exception of certain specific areas. The Temporary Domestic Exclusion Act is not yet in force on Bonaire, St Eustatius or Saba. At the present time, victims of domestic violence do have the option, however, of applying to the civil courts for a restraining order (*contactverbod*), prohibiting the perpetrator from seeking contact with them.

Bonaire, St Eustatius and Saba intend to implement temporary domestic exclusion legislation as part of implementing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. An impact analysis will be conducted with a view to clarifying the way in which the Convention can be implemented in the Netherlands in the Caribbean and the possible social and organisational implications. After this, an impact plan will be drawn up, from which it will become clear when the various sections of the convention will be implemented. The expectation is that the impact plan will be sent to Parliament in 2014.

On 18 April 2012 a new Criminal Code for Aruba was approved by parliament and adopted by the Government of Aruba on 27 April 2012. The provisions governing stalking, assault and orders barring persons from entering certain areas of the island (*gebiedsverbod*) in the new Criminal Code are virtually identical to the corresponding provisions in the new Criminal Code of Curaçao. Any person who commits common assault, serious assault, premeditated assault, assault intentionally inflicting serious bodily injury on another person, or assault with the use of weapons is liable to a term of imprisonment or fine under the terms of Articles 2:273 to 2:276. Article 2:277 provides that the term of imprisonment to which someone convicted of such an assault is sentenced is increased by one-third if the offence was committed against (*inter alia*) his spouse or partner. Someone who has been convicted of stalking is liable to a term of imprisonment or a fine. A new addition to the Criminal Code is the court's power to impose an additional penalty on a person found guilty of stalking or assault, namely an order barring him from entering a particular area. The new Criminal Code will enter into effect when the necessary legislation to implement the new Criminal Code is in place.

- *Provide specific training focused on domestic violence for the police, law enforcement and health personnel, so that they may properly investigate and deal with domestic violence.*

[1] AA/Follow-up/Netherlands/53.

As mentioned in the previous report to the Committee,[2] since 2000 the police academy has included several modules on dealing with victims in its basic training programme and follow-up course. Starting in 2012, specific attention is being devoted to domestic violence in the academy's modules "crime" and "public order and social care". A committee is currently preparing a series of training sessions on domestic violence for the various professions that encounter domestic violence or have to deal with its consequences in their work. This includes the police and other law enforcement officers, health personnel and social workers. These training sessions are expected to start in the beginning of 2014.

- *Draw up and launch without delay the new plan of action against domestic violence and ensure that the specificities of domestic violence targeting women be fully taken into consideration in the plan.*

The previous report to the Committee dwelt at length on Dutch policy on domestic violence. In July 2012 the Government set forth the government-wide approach announced in this report, in a letter to Parliament.[3] This approach is based on three elements: 1) strengthening the position of victims and potential victims (prevention, signalling problems, care, help, and aftercare); 2) a targeted approach to the perpetrators; 3) breaking through the intergenerational transfer of violence. This embraces all forms of domestic abuse, such as child abuse, intimate partner violence, sexual violence, abuse of the elderly, female genital mutilation, honour-related violence and forced marriage. This government-wide approach will be coordinated by the Ministry of Health, Welfare and Sport, in conjunction with the Ministries of Security & Justice, Education, Culture & Science, and Social Affairs & Employment. This approach embraces the entire chain of prevention, signalling, halting and aftercare. It focuses on strengthening the role of municipal authorities. The Social Support Act gives thirty-five municipalities certain responsibilities in terms of tackling domestic violence. These municipalities are responsible for coordination, and organising care and the domestic violence support centres. Central and local government are working to intensify this policy, for instance by developing regional approaches to strengthen local/regional policy. The Committee's recommendation that a new plan of action should be drawn up is at odds with the wider-ranging development of the decentralisation of tasks. Precisely because of the vigorous efforts currently being made to elaborate this approach, the Netherlands considers it undesirable to draw up a new plan. However, the Government would like to continue a dialogue with NGOs, municipalities and implementing organisations to talk about how this intensification can best be realised together. The Government would like to further explore, together with municipalities, how we can involve the NGOs more in the policy-making process. A consultation with NGOs was organised on 25 April 2013. Together with municipalities a new consultation will be organised to exchange views on how the approach to combat domestic violence can best be monitored. Indicators and measurable goals are important for effective policy-making. This was also stressed by the NGOs at the consultation in April.

The objective pursued in the current approach is to create an approach to domestic violence in the form of a sustainable system at local and regional level for all victims, regardless of age, gender, sexual preference or ethnicity. In other words,

[2] CEDAW/C/NLD/CO/5/Add.1.

[3] Parliamentary Papers 2011-2012, 28345, no. 124.

Dutch policy focuses on all victims and all forms of domestic violence. This does not alter the fact that policy and action on domestic violence must take account of gender and of the underlying causes of this violence, such as stereotypical image-forming, inequality, and a power gap between men and women, and the fact that it is primarily women who are the victims of serious, systematic domestic and sexual violence. The previous report cited a number of examples. The Netherlands is aware that the Committee and Dutch NGOs are particularly concerned about this issue, and that they wish to have more insight into the degree to which policy and actions are gender-sensitive and the ways in which the Government is taking this point into account. For these reasons, the Government will be commissioning a "gender scan" later this year to measure the gender-sensitivity of the relevant policy and its implementation. The results will be discussed in the sixth periodic national report to the Committee, in the spring of 2014.

- *Ensure that victims of domestic violence can benefit from free legal aid.*

Concerning this recommendation, the Government would refer to its 2012 interim report. In the Netherlands, victims of domestic violence can apply for legal aid subject to the existing rules. The level of legal aid provided depends on the applicant's income. If the sexual or other violence suffered by a victim of domestic violence has resulted in severe physical and/or psychological injuries, the victim is eligible for free legal assistance, regardless of financial capacity, under the terms of the Criminal Injuries Compensation Fund Act.

- *Provide information on: a) the outcome of the evaluation of the Shared Parenting and Responsible Divorce and Separation Act of 2008, scheduled to be undertaken in 2012, b) the number of women victims of domestic violence who benefited from the get-out-clause of the Act, and c) on the conditions requested, in the case law, for its application.*

The Research and Documentation Centre (WODC) launched an evaluation of the Shared Parenting and Responsible Divorce and Separation Act,[4] in relation to the parenting plan for which the Act provides, in March 2013. The evaluation will be based as much as possible on existing data and a study of the literature. The main questions it seeks to answer are how the parenting plan works in practice and the nature of the plan's long-term impact on the number of conflicts between parents and on the children's contact with both parents. It is also looking at the effects of the parenting plan on children. The report is expected to appear in September 2013.

- *Adopt the draft Criminal Code in St Maarten and ensure that it criminalises all forms of human trafficking.*

In May 2012 the Parliament of St Maarten approved the new Criminal Code, which is expected to be in place by 2013. It first has to pass the "constitutional test": in this final phase, draft legislation for St Maarten can be examined for compatibility with the Constitution. Once the Criminal Code has been adopted, St Maarten will have a legal instrument that meets international requirements regarding the criminalisation of every aspect of human trafficking.

As a young country (established on 10 October 2010), St Maarten is in the process of developing essential instruments to combat human trafficking through legislation and measures to strengthen the judicial system. It is focusing in particular on

[4] Bulletin of Acts and Decrees 2008, 500.

increasing the effectiveness of officials involved with investigating evidence of human trafficking by raising their awareness, and on informing the business community of the significance of human trafficking and forced labour.

The intention and willingness to tackle human trafficking is also consolidated in a memorandum of understanding for the Kingdom of the Netherlands to which St Maarten is a party. The implementation of the agreements concluded in this memorandum of understanding is monitored by a working group of civil servants of the Kingdom and by the justice ministers of the countries of the Kingdom.

- *Integrate additional relevant NGOs in the anti-trafficking task force.*

The primary objective of the task force is to promote the integrated effort to combat human trafficking, involving all the partners who could further this aim in some way. This includes taking preventive measures, being alert to signs of human trafficking, systematically hindering the efforts of human traffickers, and imposing sanctions on offenders. Another important subject addressed by the task force is the care and shelter of victims. The participation in the task force of the Ministry of Health, Welfare and Sport, the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, and CoMensha (a Dutch NGO specialised in combating human trafficking) will guarantee that problems and preferences in relation to the care and shelter of victims will be addressed effectively. There is also contact with NGOs working in the field of victim support, and any information received from them can be passed on. This applies all the more since the recent introduction of a new consultative structure, namely the Human Trafficking Strategic Consultative Group. This group consists of representatives of CoMensha, FairWork, PMW/COSM (a Rotterdam-based organisation assisting sex workers in general, including victims of human trafficking), ACM/COSM (Amsterdam Coordination Centre for Specialist Care for Victims of Human Trafficking), Jade COSM (Jade Specialist Care for Victims of Human Trafficking), SHOP (Foundation for Care and Shelter of Sex Workers and Victims of Human Trafficking in The Hague), Fier Fryslan and MJD Groningen (Social and Legal Services). The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children sits in on these consultations.

- *Systematically associate relevant NGOs with the identification of victims of trafficking, including by authorizing the NGOs to apply for the reflection period on behalf of the victim and by extending the NGOs' access to detention centres.*

The Netherlands endorses the importance of cooperating with the NGO sector in combating human trafficking. The police can give victims a reflection period if there is the slightest indication of human trafficking. Direct contact between victims and the police is important here. Victims can request the assistance of an NGO, which has in practice proved very valuable. In relation to gaining access to persons being held in aliens detention, a project set up by the NGO Fairwork has raised the awareness of the personnel of the Custodial Institutions Agency and the Repatriation and Departure Service that victims of human trafficking may be present in detention centres. An active effort is made to identify such individuals, and victims are referred to FairWork. In partnership with the International Organization for Migration (IOM), FairWork has launched a new project to expand knowledge and recognition skills in relation to detainees, and to continue to advise and support the staff of detention centres from a distance.

- *Ensure the effective enforcement of the new rule in force since 1 January 2011 according to which victims of trafficking who are not able or willing to cooperate with the authorities may be entitled to a residence permit under certain conditions; and extend its application by ensuring that the granting of protection unconditionally and effectively applies to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.*

Since 2011, it has been possible for a victim of trafficking to be issued with a residence permit if he or she is unable or unwilling to cooperate with the authorities on account of serious threats from the trafficker or physical/mental disabilities. This means that a residence permit can be granted on humanitarian grounds, even if a temporary residence permit has previously been refused on the grounds of refusal to cooperate with the police. Attention has been drawn to this policy framework in the course of diverse consultations with those involved in implementation. In addition, CoMensha holds informative meetings on the various possible routes to residence in the Netherlands. A victim who has cooperated with the police, and who has been issued with a temporary residence permit as a result, can also be granted a residence permit on humanitarian grounds if the public prosecutor decides not to prosecute, provided the person's return to the country of origin is undesirable.